3790.

SUPREME COURT OF THE UNITED STATES.

No. 203.

SAMUEL SMYTH, PLAINTIFF IN ERROR,

vs.

STRADER, PERRINE & CO.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE SOUTHERN DISTRICT OF ALABAMA.

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Gideon, Printer.

Pleas had before the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-eight, before his honor, William Crawford, judge of said court.

SAMUEL SMYTH
vs.
STRADER, PERRINE & Co.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and forty, Samuel Smyth sued out of said court his writ of capias ad respondendum against Strader, Perrine & Co., in the words and figures following, to wit:

Capias.

United States of America, circuit court of the United States, for the ninth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the bodies of Danl. P. Strader, John H. Woodcock, and James Perrine, late partners under the firm of Strader, Perrine & Co., who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the fourth Monday of November next, to answer unto Samuel Smyth, who is a citizen of the State of Pennsylvania, of a plea of trespass on the case to the plaintiff's damage twenty-five thousand dollars; herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said court, the second Monday of March, in the year of our Lord one thousand eight hundred and forty.

Issued the 29th day of October, in the year of our Lord one thousand eight hundred and forty.

Attest: DAVID FILES, *Clerk*.

C. C., southern district of Alabama.

(Cause of action.) *Cause of action.*

This action is founded on two notes of the defendants, in favor of and endorsed by C. Stevenson; one dated March 10th, 1836, due four months after date, for $4,725 $\frac{38}{100}$; the other, dated March 28th, 1836,

for $6,126$\frac{54}{100}$, due six months after date, negotiable and payable at the Bank of Mobile.

CAMPBELL & CHANDLER,
Plaintiff's attorneys.

Marshal's return.

Received and served October 29th, 1840, on James Perrine and John H. Woodcock; Danl. P. Strader not found.

ROBT. L. CRAWFORD, *Marshal.*

And afterwards, to wit, on the twenty-third day of February, A. D. 1841, the said plaintiff sued out of said court the following alias writ of capias ad respondendum against the said defendant, Daniel P. Strader, to wit:

Alias capias.

United States of America, circuit court of the United States, for the ninth judicial circuit and southern district of Alabama.

You are hereby commanded, as before, to take the body of Daniel P. Strader, of the firm of Strader, Perrine & Co., who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of March next, to answer unto Samuel Smyth, who is a citizen of the State of Pennsylvania, of a plea of trespass on the case to the plaintiff's damage twenty-five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this first Monday of November, in the year of our Lord one thousand eight hundred and forty.

Issued the 23rd day of February, in the year of our Lord one thousand eight hundred and forty-one.

Attest: DAVID FILES,
Clerk C. C. southern district of Alabama.

(*Cause of action.*)

This action is founded on two notes, of Strader, Perrine & Co., in favor of, and endorsed by, C. Stevenson; one, dated March 10th, 1836, due four months after date, for $4,725$\frac{33}{100}$; the other, dated March 28th, 1836, for $6,126$\frac{54}{100}$, due six months after date, negotiable and payable at the Bank of Mobile.

CAMPBELL & CHANDLER,
Plaintiff's attorneys.

Marshal's return.

"Not found."

Afterwards, to wit, on the twelfth day of January, in the year of our Lord one thousand eight hundred and forty-two, the said plaintiff sued

out of said court their pluries writ of capias ad respondendum against the said defendant, Daniel P. Strader, in the words and figures following, to wit:

Pluries capias.

United States of America, circuit court of the United States, for the ninth circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

We command you, as often before, to take the body of Daniel P. Strader, of the late firm of Strader, Perrine & Co., who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of March next, to answer unto Samuel Smyth, who is a citizen of the State of Pennsylvania, of a plea of trespass on the case to the plaintiff's damage twenty-five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one.

Issued the 12th day of January, in the year of our Lord one thousand eight hundred and forty-two.

Attest: DAVID FILES,
Clerk C. C., southern district of Alabama.

Cause of action.—*Cause of action.*

This action is founded on two notes of Strader, Perrine & Co., in favor of, and endorsed by, E. Stevenson; one dated March 10th, 1836, due four months after date, for $4,725 $\frac{34}{100}$ dollars; the other dated March 20th, 1836, for $6,126 $\frac{54}{100}$, due six months after date, negotiable and payable at the Bank of Mobile.

CAMPBELL & CHANDLER,
Plaintiff's attorneys.

Marshal's return.

Not found. And afterwards, to wit, at a term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, the said plaintiff filed in said court his declaration in the words and figures following, to wit:

Declaration.

United States of America,
Court of the United States, for the ninth judicial circuit, District of Alabama.—Fall term, 1840.

Samuel Smyth, who is a citizen of the State of Pennsylvania, by attorney, complains of Daniel P. Strader, John H. Woodcock, and James

Perrine, partners by the name of Strader, Perrine & Co., who are citizens of the State of Alabama, in custody, &c., of a plea of trespass on the case. For that whereas the defendants, heretofore, to wit, on the 10th day of March, 1836, at Mobile, to wit, in the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there promised, four months after the date thereof, to pay E. Stevenson; or order, forty-seven hundred and twenty-five $\frac{25}{100}$ dollars, for value received, negotiable and payable at the Bank of Mobile, and then and there delivered the said promissory note to the said E. Stevenson and the said E. Stevenson, the said payee, who is a citizen of the State of Ohio, afterwards, and before the payment of the said sum of money, to wit, on the day and year aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to Stinson and Campbell, who are citizens of the State of Louisiana, who afterwards, and before the payment of the said sum of money, to wit, on the day and year last aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to the said plaintiff. And the said plaintiff avers, that afterwards, when the said promissory note became due and payable, according to the tenor and effect of the same, to wit, on the 13th day of July, 1836, the said promissory note was presented and shewn at the said bank, and payment of the same was then and there demanded, according to the tenor and effect of the said promissory note; but that neither the said maker, nor the said defendant, nor any one on his or their behalf, did or would pay the same, and the said promissory note was then and there duly protested for non-payment; of all which the said defendants, afterwards, to wit, on the day and year last aforesaid, had notice. For that whereas the defendants, heretofore, to wit, on the 28th day of March, 1836, at Mobile, to wit, in the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there promised, six months after the date thereof, to pay to E. Stevenson, or order, sixty-one hundred and twenty-six $\frac{54}{100}$ dollars, for value received, negotiable and payable at the Bank of Mobile, and then and there delivered the said promissory note to the said payee, who is a citizen of the State of Ohio; and the said payee afterwards, and before the payment of the said sum of money, to wit, on the day and year aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to Stinson and Campbell, who are citizens of the State of Louisiana, who afterwards, and before the payment of the said sum of money, to wit, on the day and year last aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to the plaintiff; and the plaintiff avers that afterwards, when the said promissory note became due and payable, according to the tenor and effect of the same, to wit, on the first day of October, 1836, the said promissory note was presented and shewn at the said bank, and payment of the same was then and there demanded, according to the tenor and effect of the said promissory note; but that neither the said maker, nor the said defendants, nor any one on their behalf, did or would pay the same, or any part thereof;

and the said promissory note was then and there duly protested for non-payment thereof; of all which the said defendants afterwards, to wit, on the day and year last aforesaid, had notice. By means whereof the said defendants, by force of the statute in such case made and provided, became liable to pay to said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect thereof; and be[ing] so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, in the district aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified. Yet the said defendants, although often requested, have not paid the plaintiff the sum of money in the said promissory note specified, or any part thereof, but to pay the same have hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff twenty-five thousand dollars. Wherefore sue

GORDON, CAMPBELL & CHANDLER,
Plaintiff's attorneys.

Copy of notes sued on.—First note.

MOBILE, *March 10th*, 1836.

$4725 $\frac{32}{100}$. Four months after date we promise to pay to E. Stevenson, or order, forty-seven hundred and twenty-five $\frac{32}{100}$ dollars, value received, negotiable and payable at Bank of Mobile. Strader, Perrine, & Co. Pay to the order of Stinson & Campbell. E. Stevenson. Pay to the order of Mr. Sam'l Smyth. Stinson & Campbell. Pay to the order of Mr. Sam'l Wood. Sam'l Smyth.

Second note.

MOBILE, *March 28th*, 1836.

$6126 $\frac{54}{100}$. Six months after date we promise to [pay] E. Stevenson, or order, sixty-one hundred and twenty-six $\frac{54}{100}$ dollars, value received, negotiable and payable at the Bank of Mobile. Strader, Perrine & Co. Pay to the order of Stinson & Campbell. E. Stevenson. Pay to the order of Mr. Sam'l Smyth. Stinson & Campbell. Pay to the order of Mr. Sam'l Wood. Sam'l Smyth.

And afterwards, to wit, at a term of the said court, begun and held in and for said district at Mobile, on the fourth Monday of November, A. D. 1841, the said defendants, Woodcock and Perrine, filed in said court the following pleas, to wit:

Plea.

And the defendants, on whom the writ has been served by attorney, come and defend the wrong and injury when, &c., and say they did not undertake and promise in manner and form as the plaintiff in his said declaration hath complained against them, and of this they put themselves upon the country.

Plea.

And for further plea in this behalf the said defendants say actio non, because they say they did not sign, or authorize to be signed, the said note mentioned in the plaintiff's said declaration, and this they are ready to verify; wherefore they pray judgment whether the plaintiff ought further to have or maintain his aforesaid action thereof against them.

GAYLE & PHILLIPS, *Defts' Att'ys.*

THE STATE OF ALABAMA, *Mobile county.*

Personally appeared before the undersigned, a justice of the peace for the county aforesaid, Jno. H. Woodcock, one of the defendants to the above stated cause, and on oath saith that the second plea above pleaded is true in substance and fact, to the best of his knowledge and belief.

JOHN H. WOODCOCK.

Sworn and subscribed before me, this 22d day of May, 1841.
Jo. CLEMENT.

And afterwards, to wit, at a term of the said court, begun and held in and for said district at Mobile, on the fourth Monday of November, A. D. 1842, the said defendant Woodcock filed in said court the following plea, to wit:

Plea of Woodcock.

The defendant in bar, John H. Woodcock, pleads that since the last continuance by the decree of the district court, for the southern district of Alabama, he has been discharged as a bankrupt, and has obtained his final certificate of discharge herewith shewn, and issue to the country.

GAYLE.
Test: STEWART & E.,
For defendant Woodcock.

Replication per fraudem and issue joined.

GORDON & OGDEN,
GIBBONS & FISHER.

And afterwards, to wit, at a term of said court, begun and held in and for said district at Mobile, on the fourth Monday of December, A. D. 1846, the following proceedings were had, to wit:

Continuance.

It is ordered by the court that this cause be continued.

And afterwards, to wit, at a term of said court, began and held in and for said district at Mobile, on the second Monday of April, A. D. 1847, the following proceedings were had, to wit:

Continuance.

It is ordered by the court that this cause be continued.

And afterwards, to wit, at a term of said court, began and held in and for said district at Mobile, on the fourth Monday of December, A. D. 1847, the following proceedings were had, to wit:

Order.

This cause is continued by agreement of parties, on condition that a trial shall be had at the next term of this court, or in default thereof by defendants a judgment shall be entered by plaintiff for the amount claimed.

And afterwards, to wit, on the eighteenth day of April, A. D. 1848, being a day of a term of said court, begun and held in and for said district at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-eight, the following proceedings were had, to wit:

This day came the parties aforesaid, by their attorneys; whereupon came the following jury, to wit, John Hurtell, Frederick Sheffield, Joseph W. Moore, James F. McBride, Joseph Cain, Mark A. Ward, Chas. Gascoigne, Lewis Gurringer, John Parham, Isaac T. Longstreth, and Charles Bancroft, good and lawful men, who, being duly elected, tried, and sworn, well and truly to try the issue joined between the said parties, upon their oaths do say, we the jury find for the defendant.

Judgment.

It is therefore considered by the court that the said plaintiff take nothing by his said writ, and that the defendant go hence without a day, and recover of the said plaintiff his costs by him herein expended.

Bill of exceptions.

Memorandum.—Be it remembered, that on the trial of the above entitled cause the plaintiff, to maintain his action, offered in evidence the promissory notes sued on in this action, and also the testimony of one Samuel Hood, taken by deposition, under the act of Congress, which is as follows: In a certain cause, pending in the circuit court of the United States of America, for the ninth circuit, and southern district of Alabama, at Mobile, wherein Samuel Smyth is plaintiff, and James Perrine and John H. Woodcock, partners in the late firm of Strader, Perrine & Co., are defendants, I, John Swift, mayor of the city of Philadelphia, in the State of Pennsylvania, at the instance of the plaintiff in the said suit above entitled, have caused Samuel Hood, who resides in the city of Philadelphia more than one hundred miles from the city of Mobile, to come before me, at my office, in the said

city, and the said witness having been by me examined, cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say, as follows, to wit:

I have acted as the attorney and legal adviser of the above named Samuel Smyth for seven or eight years last past; he consulted me in the year 1836 concerning debts due to him from the firm of Stinson & Campbell, of New Orleans, from the time that firm began to be embarrassed, about the beginning of the summer of 1836, for two or three years after. In this way I had access to, and saw the letters, communications, and enclosures from Stinson & Campbell to Samuel Smyth during the summer of 1836, generally as soon as they reached Philadelphia. I also saw the accounts between Sam. Smyth and Stinson & Campbell, and saw and examined, and had in my possession, the account current furnished to Sam. Smyth by Stinson & Campbell; from these as well as conversations with Stinson & Campbell, I am enabled to say that at the time of the failure of Stinson & Campbell, which was about the beginning of the summer of 1836, they were indebted to Samuel Smyth upwards of twenty thousand dollars. Among the remittances sent by Stinson & Campbell to Sam. Smyth, in part payment of their account, were the two promissory notes of Strader, Perrine & Co., of Mobile, which I now hand to be annexed to this deposition, one of them, marked (E,) is dated Mobile, March 10th, 1836, for $4,725 $\frac{51}{100}$, payable four months after date, to E. Stevenson or order, negotiable and payable at Bank of Mobile. It is endorsed: Pay to the order of Stinson & Campbell. E. Stevenson. Pay to the order of Mr. Sam. Smyth. Stinson & Campbell. Pay to the order of Mr. Sam. Wood. Sam. Smyth. The other note, marked (F) is dated Mobile, March 28th, 1836, for $6,126 $\frac{54}{100}$, payable six months after date to E. Stevenson or order, negotiable and payable at the Bank of Mobile. It is endorsed: Pay to the order of Stinson & Campbell. E. Stevenson. Pay to the order of Mr. Sam. Smyth. Stinson & Campbell. Pay to the order of Mr. Samuel Hood. Sam Smyth. Sam. Hood. Besides the notary and court marks at the top and bottom of the back of this note: the signature, Sam. Hood, is mine, made merely for the purposes of collection; both notes were endorsed to me by Sam. Smyth, solely for that purpose.

I never had any interest in either of the notes; these notes were enclosed in a letter from Stinson & Campbell to Sam. Smyth, and I saw both of them in his possession before either was due. Stinson & Campbell were credited with the full amount of these notes in the account current between them and Sam. Smyth, and if both notes had been paid by Strader, Perrine & Co., a large balance would have been due and owing to Samuel Smyth from Stinson & Campbell. In the latter end of August, 1836, I left Philadelphia for New Orleans, having received a letter of attorney from Sam. Smyth, with power to settle his affairs with Stinson & Campbell, and to collect, among other claims, the notes above described and to be annexed hereto. I took the notes with me from Philadelphia, and presented them at the store of Strader, Per-

rine & Co., of Mobile, and demanded payment, both notes being then due. I saw Mr. Strader, who refused to pay the notes, saying that these notes had been drawn by Stevenson, one of their firm, without the consent or knowledge of the other members of the firm, and that they would never be paid by them. I afterward saw Doctor Perrine, another member of the firm, with whom I had a conversation; he also refused to pay the notes, saying that Stevenson had not the consent of the other partners of the firm for the making of these notes. In these conversations, with Strader and Perrine, it was admitted by them that Stevenson was one of the firm of Strader, Perrine & Company, at the date of the notes, but that the partnership had afterwards been dissolved, and that the notes were signed by Stevenson. One of the notes became due before I reached Mobile, so that it was not protested; the other, (that for $6,126 $\frac{54}{100}$,) became payable a few days after I reached Mobile, and I had it protested for non-payment.

Sam. Smyth, during the year 1836, and for some time before, had an extensive distillery in Philadelphia, and imported liquors to different parts of the United States. Stinson & Campbell were his consignees in New Orleans, to whom he consigned, for sale, from time to time, large quantities of brandy and other liquors; it was in this way that Stinson & Campbell became indebted to Sam. Smyth. I am not at all interested in the result of this cause. I waited in Mobile till the last of the above described notes became due before calling at the store of the makers, to demand payment. These drafts or bills of exchange are shown me, and are handed to be affixed to this deposition, marked A B and C. I saw the two notes of Strader, Perrine & Co., above referred to, and to be annexed hereto, before the 22d of August, 1836, when the drafts appeared to have been accepted. I saw these notes in the possession of Sam'l Smyth before the said 22d August, 1836. The words, "accepted 22d August, 1836, Sam. Smyth," on the face of each of the three drafts are in the handwriting of Sam'l Smyth; I am well acquainted with his handwriting; the signature of the drafts, "Stinson & Campbell," is in the handwriting of Campbell, one of that firm; and the endorsement of Sam'l Comly on the back of each draft, is in the handwriting of Samuel. Comly, of Philadelphia. These drafts were appended to the deposition of John F. Addington, when taken before Mr. Troubat formerly, April 9th, 1838. I am acquainted with the signatures of Stinson & Campbell, and of Sam'l Comly; I am not acquainted with the handwriting of Samuel Thompson & Co., and do not know, of my own knowledge, that the signatures above that of Sam'l Comly on the back of said draft is in the handwriting of any of that firm, but believe it to be so, from conversations with the said Thompson, in New Orleans, through whom these drafts were negotiated for Stinson & Campbell. The signatures, "Stinson & Campbell," and "Sam. Smyth," endorsed on each of the above described notes of Strader, Perrine & Co., are in the handwriting of Campbell, of the firm of Stinson & Campbell, and of Samuel Smyth, of Philadelphia, respectively; I am not acquainted with the handwriting of Strader, Per-

line & Co., or any of that firm; but both Strader and Perrine admitted to me that the notes were signed and endorsed by E. Stevenson, then one of the firm. I am acquainted with the handwriting of Samuel Smyth from having seen him write very frequently for many years, and from having had frequent correspondence with him during many years. I am acquainted with the handwriting of Messrs. Stinson & Campbell from having seen them write, and from frequently perusing letters from them, sometimes written by Campbell, and sometimes by Stinson, to Sam'l Smyth and to myself. I am acquainted with the signature of Sam'l Comly, from having seen him write it, and seeing writing of his with his signature.

SAM. HOOD.

Sworn and subscribed before me, this 19th of August, A. D. 1841.

JOHN SWIFT, *Mayor*.

And I, the said John Swift, mayor of the said city of Philadelphia, do hereby certify, that I am not of counsel or attorney to either of the said parties, or interested in the event of the said cause. I further certify, that the said defendants have no regular attorney, known to me, within one hundred miles of the said city of Philadelphia, the place of taking the said deposition, nor are the said defendants within one hundred miles of the same place; and no notice of the taking of this testimony has for that reason been served on them, and that the said testimony was wholly reduced to writing by the witness in my presence, and by the witness subscribed in my presence.

In testimony whereof I have hereunto set my hand and caused the corporate seal of the said city to be affixed, this 19th day of August, A. D. 1841.

JNO. SWIFT, *Mayor*. [L. S.]

Drafts marked A B and C, attached to the foregoing deposition of Samuel Hood.

Draft A.

Exch. $3,812$\frac{53}{100}$. NEW ORLEANS, *Aug. 5th*, 1836.

Thirty days after sight of this first of exchange, (second unpaid,) pay to Mr. Samuel Thompson & Co., or order, thirty-eight hundred and twelve $\frac{53}{100}$ dollars, value received, and charge the same to account.

STINSON & CAMPBELL.

To Mr. SAMUEL SMYTH, *Philadelphia*.

Accepted, 22d August, 1836. SAMUEL SMYTH.

Pay to Mr. Samuel Comley, or order.

SAMUEL THOMPSON & Co.

SAM. COMLEY.

Draft B.

Exch. $3,812$\frac{53}{100}$. NEW ORLEANS, *Aug. 5th*, 1836.

Sixty days after sight of this first of exchange, (second unpaid,) p

to Messrs. Samuel Thompson & Co., three thousand eight hundred and twelve $\frac{54}{100}$ dollars, for value received, and charge the same to account.

STINSON & CAMPBELL.

To Mr. Samuel Smyth, *Philadelphia*.

Accepted, 22d August, 1836. SAMUEL SMYTH.
Pay to Mr. Samuel Comley, or order.
SAMUEL THOMPSON & Co.
SAM. COMLEY.

Draft C.

Exch. $3,812$\frac{54}{100}$ New Orleans, *Aug. 5th*, 1836.

Ninety days after sight of this first of exchange, (second unpaid,) pay to Messrs. Samuel Thompson & Co., or order, three thousand eight hundred and twelve $\frac{54}{100}$ dollars, value received, and charge the same to account.

STINSON & CAMPBELL.

To Mr. Samuel Smyth, *Philadelphia*.

Accepted, 22d August, 1836. SAMUEL SMYTH.
Pay to Mr. Samuel Comley, or order.
SAMUEL THOMPSON & Co.
SAM. COMLEY.

Deposition marked G.

John F. Addington, of the city of Philadelphia, accountant, deposes and says, I am the bookkeeper of the plaintiff, and have been such since the 1st of January, 1836; in that capacity I had become acquainted with all or most of the plaintiff's business transactions. On the 22d August, 1836, the plaintiff accepted these drafts, each drawn by Stinson & Campbell, of New Orleans, dated the 5th of August, 1836; one at thirty days after sight, for $3,812$\frac{53}{100}$, another at sixty days after sight, for $3,812$\frac{53}{100}$; the third at ninety days after sight, for $3,812$\frac{54}{100}$; making, together, $11,437$\frac{61}{100}$. These drafts were respectively paid by the plaintiff, Mr. Samuel Smyth, at maturity.

And I now have them to be annexed, with this my deposition, marked A B and C on the back respectively by me, in the above order. The acceptance written across the face of each note, with the signature, two of which are erased, are in the proper handwriting of Mr. Samuel Smyth, the drawee. These erasures were after the payment of them by him.

JOHN F. ADDINGTON.

Sworn and subscribed before me, this 9th April, A. D. 1838.
FRA. J. TROUBAT, *Not. Pub.*

City of Philadelphia, *ss.*

I, Francis J. Troubat, notary public for the Commonwealth of Pennsylvania, residing in the said city, duly commissioned and sworn, do certify, that the foregoing are the depositions of Samuel Hood, Robert

Lawrence, and John F. Addington, to me personally known, reduced to writing, and subscribed by them in my presence, respectively taken in the aforesaid cause of Samuel Smyth vs. Strader, Perrine & Co., pending in the said circuit court of Alabama, Mobile county, to serve as evidence in said cause, under and by virtue of the annexed commission or rule of court, issuing thereout, on the day and at the place therein prescribed; the said witnesses having been first duly sworn by me, according to law, to tell the truth, the whole truth, and nothing but the truth; and the said depositions were duly sealed up by me, addressed to the said court, the said three drafts being also annexed by me.

In testimony whereof I have hereunto set my hand and notarial seal, this ninth day of April, A. D. 1838, at the city court-house of the same city. [L. S.] FRA. J. TROUBAT.

In a certain cause pending in the circuit court of the United States of America, for the ninth circuit, in the southern district of Alabama, at Mobile, wherein Samuel Smyth is plaintiff, and James Perrine and John H. Woodcock, partners in the late firm of Strader, Perrine & Co., are defendants, I, John Swift, mayor of the city of Philadelphia, in the State of Pennsylvania, at the instance of the plaintiff in the above entitled case, caused Francis J. Troubat, who resides in the city of Philadelphia, more than one hundred miles from the city of *Philadelphia*, to come before me, at my office, in the said city; and the said witness having been by me examined, cautioned, and sworn to testify the whole truth, did depose and say as follows: I am a notary public of the State of Pennsylvania, residing in this city (of Philadelphia;) on the 9th of April, A. D. 1838, John F. Addington, then of the said city, made his deposition before me in the case of Samuel Smyth vs. Strader, Perrine & Co., on behalf of the plaintiff; he was duly sworn, and his testimony reduced to writing by me, along with other witnesses. His deposition, so taken by me, and signed by him, is hereto annexed, marked G, with my certificate thereon endorsed, in return to the court of Mobile.

FRA. J. TROUBAT.

Sworn and subscribed in my presence this 19th day of August, A. D. 1841. JNO. SWIFT, *Mayor*.

And I, the said John Swift, mayor of the said city of Philadelphia, do hereby certify, that I am not of counsel or attorney to either of the said parties, or interested in the event of the said cause; I further certify, that the said defendants have no agent or attorney known to me, within one hundred miles of the said city of Philadelphia, the place of taking the said deposition, nor are the defendants within one hundred miles of the said place, and no notice of the taking of this testimony has for that reason been served on them, and that the said testimony was wholly reduced to writing in my presence, and by the said witness subscribed in my presence.

In testimony whereof I have hereunto set my hand, and caused the corporate seal of the said city to be affixed, this 19th day of August, A. D. 1841. [L. S.] JNO. SWIFT, *Mayor*.

In a certain cause pending in the circuit court of the United States of America, for the ninth circuit, in the southern district of Alabama, at Mobile, wherein Samuel Smyth is plaintiff, and James Perrine and John H. Woodcock, partners in the late firm of Strader, Perrine & Co., are defendants, I, the subscriber, mayor of the city of Philadelphia, in the State of Pennsylvania, at the instance of the plaintiff in the said suit above entitled, have caused Mathew Hood, who resides in the city of Philadelphia, more than one hundred miles from the city of Mobile, to come before me at my office in the said city; and the said witness having been by me examined, cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say, as follows:

I am well acquainted with John F. Addington, formerly bookkeeper and clerk of Samuel Smyth above named; he was so employed during the whole of the year 1836, and up till April, 1839, I being in the same office during all that time. In April, 1839, the said J. F. Addington having lost his health went to England, of which country he was a native; I do not know whether he is now living or not; I am well acquainted with his handwriting; I have now before me the bill book of the said Samuel Smyth, being shown to me for that purpose; in that bill book are the following entries, in the handwriting of the said John F. Addington:

1836, Aug. 5th, Stinson & Campbell, Saml. Smyth,
Saml. Thompson & Co., 30 days, Stinson & Campbell.
22d August, Sept. 24, $3,812 53, paid 60 days do.
Do. Oct. 24, 3,812 53, paid.
Do. do. 90 days.
New Orls. 23, 3,812 54, paid.

The book in which the above entries are made in the handwriting of the said J. F. Addington, has printed on the top of each folio the following words, separated by black lines, to wit:

Bills and notes payable.

No. | Date. | Drawn. | On whom drawn. | To whom payable. | Days of sight. | Date. | Drawn for whose account. | Accepted. | When due. | Dollars. | Cents. |

The above entries, in the handwriting of J. F. Addington, are entered under the above mentioned printed headings, or captions, respectively, there being no entry under the printed word No. I had from the first of January, 1836, until the month of April, 1839, from being also employed in the capacity of clerk in the same office with J. F. Addington, a daily opportunity of becoming acquainted with his handwriting, from seeing him write.

MAT'W HOOD.

Sworn and subscribed before me, this 19th August, A. D. 1841.
JNO. SWIFT, *Mayor.*

And I, the said John Swift, esquire, mayor of the said city of Phila-

delphia, do hereby certify, that I am not of counsel or attorney to either of the said parties, nor interested in the event of the said cause; I further certify, that the said defendants have no agent or attorney known to me within one hundred miles of the said city of Philadelphia, the place of taking the said depositions, nor are the defendants within one hundred miles of the said place, and no notice of the taking of this testimony has for that reason been served on them, and that the said testimony was wholly reduced to writing by the witness, in my presence, and by the said witness subscribed in my presence.

In testimony whereof I have hereunto set my hand and caused the [L. S.] corporate seal of the said city to be affixed, this 19th day of August, 1849. JNO. SWIFT, *Mayor*.

Whereupon the defendants objected to so much of said deposition as is contained in the following words, to wit:

"He acted as the attorney and legal adviser of the said Samuel Smyth for seven or eight years last past. He consulted me in the year 1836, concerning debts due to him from Stinson & Campbell, of New Orleans, from the time when the said firm began to be embarrassed, about the beginning of the summer of 1836, for two or three years after; in this way I had access to, and saw the letters, communications, and enclosures from Stinson & Campbell to Samuel Smyth, during the summer of 1836, generally as soon as they reached Philadelphia; I also saw the account between Samuel Smyth and Stinson & Campbell, and saw, and examined, and had in my possession, the account current furnished to Samuel Smyth by Stinson & Campbell; from these, as well as conversations with Stinson & Campbell, I am enabled to say, that at the time of the failure of Stinson & Campbell, which was about the beginning of the summer of 1836, they were indebted to Samuel Smyth upwards of twenty thousand dollars."

Which objection, on the part of the defendants, was sustained by the court, and so much of the deposition as is contained in the foregoing extract from it, was excluded from the jury. To which decision of the court, and exclusion of the said testimony from the jury, the plaintiff by his counsel excepts, and prays the court to sign and seal this his bill of exceptions, which is done accordingly.

WM. CRAWFORD, [L. S.]
Judge.

[The following, in the original, marked across the face with pencil.]

Know all men by these presents, that we, Samuel Symthe and Peter Hamilton, are held and firmly bound unto William Thomas Carroll, clerk of the Supreme Court of the United States, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said William Thomas Carroll, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and

severally, by these presents. Sealed with our seals, and dated this third day of September, in the year of our Lord one thousand eight hundred and fifty.

Whereas, lately, at a term of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in a suit pending in said court, wherein Samuel Symthe was plaintiff, and Strader, Perine & Co., were defendants, judgment was rendered against the said plaintiff; and the said plaintiff having obtained a writ of error to remove the said cause to the Supreme Court of the United States, and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States, to reverse the judgment in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said Samuel Smythe shall well and truly pay, or cause to be paid, to the said William Thomas Carroll, his heirs, executors, administrators, or assigns, all such fees as shall accrue to the said William Thomas Carroll, clerk as aforesaid, and chargeable to the said Samuel Smythe, in the prosecution of the said writ of error, then the above obligation to be void, otherwise to remain in full force and virtue.

SAMUEL SMYTH, [SEAL.]
Per P. HAMILTON, *Atty.*
P. HAMILTON, [SEAL.]

Sealed and delivered in presence of—
GEO. W. MILLER.

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the within and foregoing twenty-eight pages contain a full, true, and perfect transcript of the record and proceedings in a certain cause lately pending and determined therein, wherein Samuel Smyth was plaintiff, and Strader, Perine & Co., were defendants, as the same remain of record and on file in my said office.

In testimony whereof, at [my] office, in the city of Mobile, I have hereunto set my hand, and affixed the seal of said circuit court, this [SEAL.] twenty-seventh day of September, in the year of our Lord one thousand eight hundred and fifty.

JOHN FITTS,
Clerk C. C. So. Dist., Alabama.

UNITED STATES OF AMERICA.

The President of the United States, to the honorable the judges of the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of judgment in a plea in the said circuit court, before you, wherein Samuel Smyth is plaintiff, and Strader, Perine & Co., are defendants, a manifest error hath happened to the great damage of the plaintiff, as by

his complaint appears and it being fit that, if error there be, the same should be corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington on the first Monday of December next, in the Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings therein, to correct the error, what of right and according to law and the custom of the United States should be done.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this first Monday of December, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.]

Issued the third day of September, in the year of our Lord one thousand eight hundred and fifty.

JOHN FITTS,
Clerk C. C., So. Dis., Alabama.

UNITED STATES OF AMERICA.

The President of the United States, to the marshal of the southern district of Alabama, greeting:

You are hereby commanded to cite and admonish Daniel P Strader, James Perine, and John H. Woodcock, late partners under the firm of Strader, Perine & Co., or their attorneys, Messrs. Stewart & Eastin, and A. T. Hopkins, to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, then and there to hear errors assigned, on a certain writ of error directed to the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in which Samuel Smyth is plaintiff, and Strader, Perine & Co., are defendants.

Herein fail not, and have you before the said Supreme Court this writ, with your endorsement.

Witness the honorable John Gayle, district judge of the United States for the State of Alabama, acting as judge of the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama, this third day of September, A. D. 1850.

(Signed) JOHN GAYLE,
Judge, &c.

Received September 27th, 1850, and executed same day, and handed James Perine a copy. C. BINGHAM, *U. S. Marshal.*